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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Telephone Number Portability  
Third Report and Order

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CC Docket No. 95-116  
RM-8535

**PETITION FOR RECONSIDERATION AND CLARIFICATION**

National Telephone Cooperative Association  
2626 Pennsylvania Avenue, N.W.  
Washington, D.C. 20037

National Telephone Cooperative Association  
July 29, 1998

CC Docket No. 95-116  
RM - 8535

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PETITION FOR RECONSIDERATION AND CLARIFICATION

Pursuant to 47 C.F.R. §1.429, the National Telephone Cooperative Association (“NTCA”) hereby petitions the Federal Communications Commission to reconsider and/or clarify its *Third Report and Order*<sup>1</sup> in the above captioned proceeding.

I. INTRODUCTION

NTCA is a national association of approximately 500 local exchange carriers that provide service primarily in rural areas. All NTCA members are small carriers that are “rural telephone companies” as defined in the Telecommunications Act of 1996 (the “Act”).<sup>2</sup> Approximately half of NTCA’s members are organized as cooperatives.

Most of NTCA’s members operate outside of the 100 largest MSAs and therefore need not offer number portability until within six months of a request from another carrier offering competing local service. While most NTCA members will not immediately be required to offer

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<sup>1</sup> *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, RM-8535, Released May 12, 1998, Published in Federal Register June 29, 1998. (Third Report and Order)

<sup>2</sup> 47 U.S.C. §§ 151 *et. seq.*

number portability, they will incur immediate costs of contributing to regional databases, and those associated with their purchase of query services.<sup>3</sup>

NTCA respectfully submits that in the *Third Report and Order* the Commission has not sufficiently addressed cost-recovery issues. The *Third Report and Order* does not provide carriers who do not provide number portability the mechanism to recover the shared costs of regional databases, or database query charges assessed by other carriers.

**II. THE FCC SHOULD RECONSIDER AND/OR CLARIFY ITS RULES SO THAT ILECS NOT OFFERING NUMBER PORTABILITY CAN RECOVER THEIR COSTS "DIRECTLY RELATED TO PROVIDING NUMBER PORTABILITY"**

Carriers outside of the 100 largest MSAs are not expected to provide number portability until they have specifically received a request from a competing carrier. However, even carriers who have not received such a request are expected to contribute to the costs associated with the establishment and maintenance of a regional database.<sup>4</sup> Also, all carriers, even those not yet required to provide number portability, are responsible for properly routing calls to telephone numbers in locations where number portability is available.<sup>5</sup> Carriers may meet that responsibility either by routing the call to one of their switches that is capable of performing the

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<sup>3</sup> Smaller LECs that participate in Extended Area Service (EAS) or other joint local calling arrangements that would require them to perform queries for their customers in all cases once any number within the NXX is ported even if the smaller LEC does not serve its customers from a number portability capable switch.

<sup>4</sup> *Third Report and Order*, ¶ 113.

<sup>5</sup> *In re Telephone Number Portability*, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236, 7277 (1997). (First Reconsideration Order)

necessary database query, or by arranging for another carrier or a third party to query the database or route the call.<sup>6</sup>

The Commission purports to establish a cost-recovery mechanism for costs associated with the establishment and maintenance of the regional databases and database queries, but the final rules fall short. While there is a definite and substantial cost for carriers even if they do not have a request to provide number portability, under the current rules, there is simply no way for such carriers to recover their costs. The FCC should reconsider and/or clarify its rules so that the interests of the smaller ILECs and their ratepayers are protected.

#### A. Costs of Regional Databases

The cost of number portability attributable to a regional database is recovered from all telecommunications carriers providing telecommunications service in areas that regional database serves.<sup>7</sup> Once the costs are allocated to each telecommunications carrier, its portion of the shared cost is treated as a “carrier-specific cost directly related to providing number portability.”<sup>8</sup> The rules state that ILECs may recover that cost from “each end user it serves from a number-portability-capable switch outside the 100 largest metropolitan statistical areas, one monthly number-portability charge per line . . .”<sup>9</sup> The problem with this rule is that it allows recovery only for carriers with a number-portability switch, but a small ILEC may not need a number-portability-capable switch. The rules state that a carrier outside of the 100 largest MSAs

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<sup>6</sup> *Id.*

<sup>7</sup> 47 C.F.R. § 52.32(a).

<sup>8</sup> 47 C.F.R. § 52.32(c).

<sup>9</sup> 47 C.F.R. § 52.33 (a)(1)(A).

need NOT provide number portability until it receives a request from a competitor. Some rural areas may not receive a request for number portability for several years. The five-year recovery period provides no relief for such an ILEC providing service to such an area. That same ILEC would be forced to contribute to sustain a regional database with absolutely no means of cost-recovery. Such a result is nonsensical and confiscatory.

The FCC's reason for limiting recovery to those carriers with a number-portability-capable switch is provided in one sentence of the *Third Report and Order*; "[b]ecause carriers may make any switch number-portability capable, this approach will encourage carriers to install number portability and help ensure that end-users are assessed number portability charges only where they are reasonably likely to be benefitting from number portability."<sup>10</sup> That sentence does not provide a reasoned analysis to support the final cost recovery rules and contradicts the analysis of previous Commission Orders. The Commission in 1997 exempted carriers outside of the 100 largest MSAs from updating their systems to provide number portability until a number portability request is received. The exemption was adopted in an effort to address carriers' concerns of smaller and rural LECs so that they wouldn't have to upgrade their networks "at significant expense even if no competitors desire portability"<sup>11</sup> Under the current cost-recovery rules, the small and rural LECs are forced to either: (1) upgrade their systems and assess charges on their end-users; or (2) contribute to the costs of the regional database with no method of cost-recovery. Both options create "significant expense" for the carrier even if it has received absolutely no request for number portability.

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<sup>10</sup> *Third Report and Order*, ¶ 143.

<sup>11</sup> *First Reconsideration Order* at 7272.

It appears that the Commission has once again failed to consider the impact of its rules on small and rural telecommunications carriers. While an end-user charge may not be appropriate in those areas where number portability is not available, some cost recovery mechanism must be in place. The FCC should reconsider its rules so that ALL carriers, whether or not they provide number portability, may recover costs associated with database administration.

#### B. Costs of Database Queries

Similar to the regional database cost recovery rules, the FCC considers costs associated with the query-service a "carrier-specific cost directly related to providing number portability."<sup>12</sup> The current rules provide only those ILECs who perform the query service to recovery their cost from the carriers who receive the service. The rules don't establish any cost-recovery mechanism for those carriers that will be required to launch queries, but do not provide the query service themselves and do not have number portability software in their switches. Small ILECs participating in joint local calling arrangements will be required to purchase query services if any number in a NXX is ported even if they do not have number portability capable switches. Most of these ILECs will have agreements with larger ILECs who will provide number portability database query services. These larger ILECs will follow the new rules and assess smaller ILECs a charge for the service.

The *Third Report and Order* fails to address how carriers without number portability capability that must purchase the query services may recover their costs. Despite the fact that

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<sup>12</sup> *Third Report and Order*, ¶ 71.

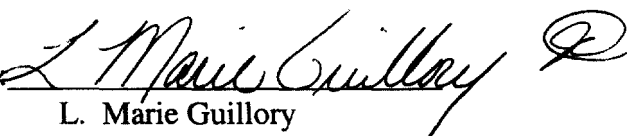
non-number-portability-capable carriers will incur significant and substantial costs associated with the query service, the current rules appear to prevent the carriers from recovering.


### III. CONCLUSION

The Commission should reconsider its *Third Report and Order* and provide a mechanism that permits ILECs incurring the costs associated with database administration and queries of any kind to recover their costs.

Respectfully submitted,

NATIONAL TELEPHONE COOPERATIVE  
ASSOCIATION

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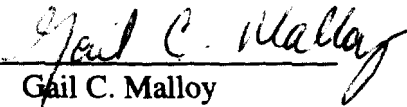
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July 29, 1998

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Petition for Reconsideration and Clarification of the National Telephone Cooperative Association in CC Docket No. 95-116/RM-8535 was served on this 29th day of July 1998, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

  
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